



Kentucky Labor Cabinet

LABOR WORKS

2010 Governor's Safety and Health Conference

The 26th Annual Governor's Safety and Health Conference and Exposition will take place May 4 - 7, 2010, at the Galt House in Louisville.

The Conference will feature pre-conference courses this year along with general sessions with outstanding keynote speakers, and concurrent workshops focusing on state-of-the-art techniques, current issues, and trends in workplace safety and health.

As always, participants will enjoy invaluable networking opportunities and the largest health and safety product Exposition in the Commonwealth.

For more information, please visit
www.kshn.net

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Greetings

Secretary J.R. Gray

As the winter woes of 2009 and 2010 begin to fade from our memories and the spring flowers come to life, along with trees turning green in the Bluegrass state, it is a good time for reflection and optimism.

Although we are still experiencing an economic downturn in our great state, we find that a number of states are facing much more devastating circumstances than we find here in the Commonwealth.

Fortunately, the Labor Cabinet has reduced personnel and operating costs significantly through natural attrition. We have not experienced the hardship of employee layoffs as many have experienced in neighboring states. We are asking our employees to do more with less and they have answered the challenge and are performing magnificently.

As Kentuckians, we have many reasons to

celebrate. After all, we are privileged to live in a wonderful state in the greatest country of the world. Citizens of other countries would gladly sacrifice all their worldly treasures for the privilege of enjoying our many freedoms.

Kentucky's Safety and Health Program was one of the first to be certified by the Federal Occupational Safety and Health Administration. Our safety and health program was recently audited by the Federal OSHA audit team. Due to the efforts of our dedicated and highly qualified employees, we expect rave reviews as a result of the audit.

I encourage all of you to carry the awareness of the need to practice safety not only in the workplace, but at home when you perform those routine maintenance chores this spring. You can prevent accidents, injuries, and even deaths at home by following a few safety



★ Secretary J.R. Gray ★

rules. Beware of the eminent dangers of permitting children to ride on a mower and prohibit them from being in the proximity of a mower when in use. When climbing, make sure to use an appropriate ladder and be sure it is used in accordance with the manufacturer's recommendations. Remember, "safety is no accident" and should be our number one goal.

I look forward to visiting with you at the 2010 Kentucky Governor's Safety and Health Conference.



Take 10" and Help Kentucky Get What it Needs for the Next 10 Years

In March 2010, more than 130 million addresses received a 2010 Census form by mail or hand delivery. The 2010 Census will document the changes in our nation since the last decennial census in 2000, and tell us how we've evolved as a country. Because census data affect how more than \$400 billion in federal funding is distributed to tribal, state and local governments, the census also will frame the future of our country and our community for the next 10 years.

During Census 2000, the mail participation rate was 72 percent as of the April 2000 cut-off. About \$85 million is saved for every one percent increase in mail participation. For these and many other reasons, we must work to encourage everyone's participation in the census.

Legislative News

Deputy Secretary Mark Brown

During the last administration, the Labor Cabinet was reorganized and became part of a mega cabinet called the Environmental and Public Protection Cabinet. Labor became a department within that cabinet and labor leaders across the Commonwealth were upset by what they and others felt was a degrading of the importance of worker protection issues in Kentucky.

In 2007, then candidate Steve Beshear recognized the importance of protecting Kentucky's workforce and made the issue a central theme in his campaign for governor. After his election and inauguration, Governor Beshear fulfilled his commitment to the working men and women of Kentucky by issuing an executive order that restored Labor to Cabinet status.



★ Deputy Secretary Mark Brown ★

By Kentucky law, the Governor's Executive Orders must be codified by the General Assembly in their next session following the issuance of the executive order. Representative Tanya Pullin was the sponsor of the legislation that would have achieved this codification in the last session. The bill easily passed the House but ran into problems in the Senate and, because of time, failed to pass that body.

Governor Beshear reissued his executive order creating the Labor Cabinet and again in the 2010 session, our friend, Representative Tanya Pullin introduced legislation that codified that executive order. The bill involved the reorganization of three cabinets, it was over 2,500 pages in length and required a great deal of work on the part of Representative Pullin, leaders from all three Cabinets, and the staff of the Legislative Research Commission.

I am happy to report that House Bill 393 passed both chambers of the legislature, (98-0) in the House and (36-0) in the Senate and will soon be signed into law by Governor Beshear.

We here at the Cabinet would first like to thank Governor Beshear for his continued support of Kentucky workers, fulfilling his commitment to elevate the state agencies that regulate their working environment back to Cabinet status. Secondly, we want to thank Representative Pullin and the members of the House and Senate for agreeing that working men and women of Kentucky are one of our most important assets and deserve the status of Cabinet protection by passage of HB 393. We also want to thank all of the people who supported HB 393 by contacting legislators on our behalf.

And, finally, Secretary Gray and the leadership staff here at the Labor Cabinet want to say a big "thank you" to all our employees. Despite the humiliation of a lowering of their status during the last administration and the suffering of reductions in numbers because of budget problems, our dedicated employees have continued their commitment to protecting the working men and women of Kentucky.

KYOSH IMPACT



The Kentucky Labor Cabinet's Occupational Safety and Health Program is rolling in 2010 with a state of the art multi-purpose vehicle designed to support compliance and outreach efforts. The Incident Mobile Post and Consultation Training vehicle, dubbed the KYOSH IMPACT, is a Class A motor coach specifically constructed to support the Division of Compliance and the Division of Education and Training. IMPACT is equipped with satellite service, surveillance equipment, internal and external monitors, workstations, and a host of other devices that will serve the Kentucky OSH Program, employers, and employees throughout the Commonwealth.

As the name indicates, the Division of OSH Compliance will deploy IMPACT to respond to occupational safety and health incidents. The Division of Compliance will also use IMPACT to support specialized strategic enforcement efforts. And, IMPACT will be utilized by the Division of Education and Training for outreach to traditional and non-traditional Labor Cabinet partners. Since IMPACT provides a means for outreach to populations the Cabinet might not otherwise reach, it is certain to be seen at a wide variety of venues around the Commonwealth. A mobile response and outreach vehicle has been a long range goal of the Labor Cabinet and was made possible through a one-time federal grant.



IMPACT will be on display and open for viewing during the upcoming Governor's Safety and Health Conference and Exposition.

Here's what you should know about the 2010 Census:

It's easy. One of the shortest census forms in history, the 2010 Census form asks 10 questions and takes about 10 minutes to complete. The individual in whose name the housing unit is rented or owned should complete the form on behalf of every person living there, both relatives and nonrelatives.

It's important. Census data are used to reapportion seats in Congress and ensure proper district representation in state and local governments. Information from the census helps determine locations for child-care and senior centers, new roads, hospitals, schools and community centers.

It's safe. By law, the U.S. Census Bureau cannot share respondents' answers with anyone, including other federal agencies and law enforcement entities. All Census Bureau employees take an oath of nondisclosure and are sworn for life to protect the confidentiality of the data. The penalty for unlawful disclosure is a fine of up to \$250,000 or imprisonment of up to five years, or both.

Finally, the most efficient way to respond to the 2010 Census is to complete the form as soon as it arrives and return it in the postage-paid return envelope. Census workers will visit households that do not return forms to take the count in person.



Wage and Hour Misclassification Victories

The misclassification and abuse of immigrant workers is a problem in Kentucky and elsewhere. The Kentucky Labor Cabinet took a great leap in its battle against the misclassification of workers. The result was over a \$1.8 million recovery, held in escrow for the workers, the debarment of an employer as well as the express agreement from an employer not to subcontract work in the future.

Historically, the Cabinet was hampered by language barriers between its field staff and immigrant workers who are often misclassified. Such was the case when the Cabinet began investigations into the non-payment of the prevailing wage on several state projects.

The first case involved the clean-up after the Louisville flooding last fall. One month after completing their work over eighty immigrant workers showed up in Louisville seeking assistance from the Laborers Local 576 and the Carpenters Unions to recover unpaid wages. Commissioner Mike Dixon and the Cabinet's General Counsel David Suetholz personally travelled to Louisville to meet with the aggrieved workers. The meeting drew the attention of the vice-president of the general contractor who agreed to make the workers whole. Three months later hundreds of workers were paid over \$1.5 million in wages. Over \$350,000 went back into the public coffers through taxes. The Cabinet is continuing to pursue the sub-contractor and will likely move for debarment should it establish the requisite employer relationship with the aggrieved workers.



★ David Suetholz ★
General Counsel

The second case presented a bigger problem for the Cabinet, but yielded a much stiffer consequence for the offending employer. The Cabinet requested payroll records to determine whether the prevailing wage was paid on several public projects. The employer in question responded to the requests by demanding documents from the workers themselves who it deemed sub or independent contractors. When the workers failed to produce the documents they were fired from the project and replaced with a new crew. The legal fiction of sub and independent contractors confounded Cabinet investigators initially. On one project the employer went through five subcontractors, none of whom could produce the documents requested by the Cabinet. The Cabinet pursued an injunction to shut down the entire project when it learned of the termination of the last group of workers in order to prevent a chilling effect on their cooperation. The workers were returned to work and assisted thereafter with the Cabinet's investigation.

The puzzle finally came together on a dry/erase board with the assistance of the workers. The Cabinet learned how the employer used several subcontractor even though the workers and owners were interchangeable. The Cabinet notified the Department of Revenue and specifically asked it to pursue its tax interests, which it did, by requesting the employer to post a revenue bond of up to \$50,000.

The Cabinet filed its complaint in the Jefferson Circuit Court (Louisville) because the employer maintained its principal place of business there. Six months later the case was settled with: 1) a total recovery of over \$300,000 in unpaid wages; 2) a voluntary debarment by the employer for six months for the purposes of bidding public projects; 3) an agreement that the employer will not use subcontractors on public projects for the next three years; 4) an express right for the case to be discussed publicly to dissuade other employers.

In the past 20 years, no employer has been debarred from eligibility to bid on public work for more than two weeks. The cases above demonstrate a seismic shift in the Cabinet's willingness to impose stiff penalties to thwart rampant wage and hour abuses.



OSH Compliance Inspection Procedures

This is the first in a series of seven articles that will describe the inspection process as well as explain the employers' rights and responsibilities during and after the inspection, the informal process, and the contest process. The final article will include tips for the employer to help prepare for inspections. The compliance inspection is made up of three separate phases: the opening conference, the walk around, and the closing conference. After the inspection, if citations are issued, the employer has informal and formal avenues of appeal.

Opening Conference

When a compliance inspector arrives at a site to conduct an inspection, he or she will ask for the plant manager or safety manager or the general contractor. The inspector presents his or her credentials to the employer representative and explains the reason for the visit and that the employer has the right to refuse entry and request a search warrant. When an employer refuses entry, the division usually seeks a search warrant issued from the Franklin Circuit Court to gain entry. Once the host employer or the general contractor has granted permission to enter the site, the other subs or employers onsite cannot refuse.

OSH Compliance conducts two types of inspections: partial and complete. A complete inspection is also called a "wall-to-wall" inspection and covers the entire facility and all written programs. Partial inspections are normally limited in scope and are initiated by fatalities, complaints, referrals, and follow-ups. Any of these partial inspections can be expanded into a complete inspection if the inspector observes or becomes aware of more widespread hazards.

After the inspector has been granted permission for the inspection, or has served the search warrant, the inspector holds an opening conference. On a construction site, or a site where multiple employers are working, the inspector may open with each employer/contractor at the outset of the inspection or

during the walk around portion of the inspection. Management has the right to designate its opening conference representative. If the employees are represented by a bargaining unit or if a safety committee or other employee group has designated a representative, they have the right to be included in the opening conference. Separate opening conferences can be held upon request.

The nature and scope of the inspection is explained. If the inspection originated from a complaint, the inspector must give the employer a copy of the complaint items. Also discussed are private employee interviews, taking of photos and videos, measurements, testing equipment, trade secrets, prohibition against discrimination against employees providing information or filing complaints, personal sampling, records review, and written programs. Injury and illness records are requested as are written programs and documents such as hazard communication, control of hazardous energy, bloodborne pathogens, permit required confined spaces, emergency response plan, emergency action plan, PPE hazard assessment, monitoring records, sampling data, training records, and safety meeting minutes. These records may be reviewed at the site or copies taken for review back at the inspector's office.

Prior to the conclusion of the opening conference, the inspector will inquire as to what personal protective equipment he or she will be required to wear while in the facility. The inspector wears the same type of PPE the employer requires his or her employees to wear in the work areas. The walk around representatives will also be determined. Usually, the employer and the employee bargaining groups choose their own walk around representatives.

**The 2008 Kentucky Occupational
Injury, Illness & Fatality
publication is now on the Labor Cabinet web site
[www.labor.ky.gov/ows/osh/educationtraining/
statsservices.htm](http://www.labor.ky.gov/ows/osh/educationtraining/statsservices.htm)**

OSHA's Proposed Crane Standard

Subpart CC: Cranes and Derricks in Construction

The Labor Cabinet has not been provided with a date of publication for OSHA's new "Cranes in Construction" final rule, 29 CFR 1926.1400. However, it is anticipated the rule will be published sometime this year. With that in mind, this is a good time for an overview of some of the changes that are in the proposed standard. The following are examples of how the emphasis on various areas of the proposed standard has increased, been added, or shifted.

One of the bigger changes has to do with *operator qualifications*. The present standard, 29 CFR 1926.550, does not address operator qualifications at all. The proposed rule establishes eight (8) pages of operator qualifications. *Inspections* occupies eleven (11) pages of requirements in the proposed standard while there is nothing in the present. The current 29 CFR 1926.550 has one-quarter page of requirements for *tower cranes*, while the proposed 29 CFR 1926.1400 establishes seven (7) pages of requirements. In the current 29 CFR 1926.550 there is one-half page addressing *floating cranes*, while the proposed 29 CFR 1926.1400 establishes one (1) page of requirements. The current standard barely addresses *signaling*, while there are three (3) pages in the proposed rule. *Ground conditions* occupies one (1) page in the proposed 29 CFR 1926.1400, *wire rope* occupies three (3) pages, and *assembly/disassembly* occupies six (6) pages. *Power lines* receives increased attention in the proposed rule, eleven (11) pages compared to one-quarter page in the current standard.

The following, while not complete, are some aspects that are new to the proposed standard:

- Fall protection,
- Signal person qualifications,
- Authority to stop operations, and
- Operational aids.

The requirements of the final rule may vary from the aforementioned information dependent upon OSHA's response to comments received after the publication of the proposed rule. When the final rule is published, it will be necessary to take a more in-depth look at the requirements. Regardless, a revised rule represents a significant improvement over the existing outdated standard and will help eliminate many of the accidents that have plagued the industry.



SAVE THE DATES!

**Kentucky Apprenticeship Conference
September 12-13, 2010**

**Kentucky Labor-Management Conference
September 14-16, 2010**

**Kentucky Dam Village State Resort Park
Gilbertsville, KY
Visit labor.ky.gov for more information.**

**The Kentucky Occupational Safety and Health Standards Board will meet
Tuesday, May 4, 2010 at 1:30 p.m.
EDST in the Breathitt Room of
The Galt House in Louisville.**



Safety Partnerships



On February 17, 2010, the Kentucky Labor Cabinet, Construction Partnership Program entered into a site-based partnership with Dugan & Meyers and Morehead State University. The project is a \$24 million recreation center on MSU's campus that will include basketball courts, swimming pool, and an indoor running track.

The Cabinet will conduct quarterly audits at the site and provide training for the prime contractor as well as subcontractors on an as-needed basis. With the University signing on to the partnership, it will give MSU students and staff the opportunity to accompany OSH Division of Education & Training during audits as well as allowing them to partake of any training provided at the site.

This is Dugan & Meyers second site specific partnership, MSU's first, and the Cabinet's fifteenth.



Copies of this newsletter, along with statutes, regulations, statistics and any other information regarding the Kentucky Labor Cabinet can be found on our website at:
www.labor.ky.gov

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For submissions and suggestions, please email: mike.donta@ky.gov

No information published herein should be construed as substituting for policy directives sent through regular channels to personnel.

If you would like your name added or removed from our mailing list, please visit our website at labor.ky.gov and choose the "subscribe to our newsletter" link on the right side of the page.

FREE **Population Center** **Training Schedule**

April 12-16
Bowling Green
Parks and Recreation
Community Room

May 24-28
Lexington
Holiday Inn North
Newtown Pike

July 19-23
Gilbertsville
Kentucky Dam Village State
Resort Park

These training series are presented by the Labor Cabinet at NO COST to the participant. Please visit labor.ky.gov for more information.

Job Stress

Job stress can be defined as the harmful physical and emotional responses that occur when the requirements of the job do not match the capabilities, resources, or needs of the worker. Job stress can lead to poor health and even injury.

The concept of job stress is often confused with challenge, but these concepts are not the same. Challenge energizes us psychologically and physically, and it motivates us to learn new skills and master our jobs. When a challenge is met, we feel relaxed and satisfied. Thus, challenge is an important ingredient for healthy and productive work. The importance of challenge in our work lives is probably what people are referring to when they say "a little bit of stress is good for you."

When the challenge has turned into job demands that cannot be met, relaxation has turned to exhaustion, and a sense of satisfaction has turned into feelings of stress, the state is set for illness, injury and job failure.



What are the causes of job stress?

Nearly everyone agrees that job stress results from the interaction of the worker and the conditions of work. Views differ, however, on the importance of worker characteristics versus working conditions as the primary cause of job stress. These differing viewpoints are important because they suggest different ways to prevent stress at work.

According to one school of thought, differences in individual characteristics such as personality and coping style are most important in predicting whether certain job conditions will result in stress — in other, words, what is stressful for one person may not be a problem

for someone else. This viewpoint leads to prevention strategies that focus on workers in ways to help them cope with demanding job conditions.

Although the importance of individual differences cannot be ignored, scientific evidence suggests that certain working conditions are stressful to most people (for example, excessive workload demands and /or conflicting expectations). Such evidence argues for a greater emphasis on working conditions as the key source of job stress, and for job redesign as a primary prevention strategy.

According to NIOSH (National Institute for Occupational Safety and Health), these are job conditions that may lead to stress:

- The design of tasks. Heavy workload, infrequent rest breaks, long work hours and shift work; hectic and routine tasks that have little inherent meaning, do not utilize workers' skills, and provide little sense of control.
- Management style. Lack of participation by workers in decision-making, poor communication in the organization and lack of family-friendly policies.
- Interpersonal relationships. Poor social environment and lack of support or help from coworkers or supervisors.
- Work rules. Conflicting or uncertain job expectations, too much responsibility, too many "hats" to wear.
- Career concerns. Job insecurity and lack of opportunity for growth, advancement, promotion; rapid changes for which workers are unprepared.
- Environmental conditions. Unpleasant or dangerous physical conditions such as crowding, noise, air pollution, or ergonomic problems.



2010 Legislative Session and Workers' Compensation

The 2010 legislation brought about the introduction of several bills of interest to the Department of Workers' Claims.

House Bill 38, Senate Committee Substitute 2: AMA Guides, usage in disability determinations: An Act relating to the American Medical Association's "Guides to the Evaluation of Permanent Impairment." (Passed as amended.)



Section 1) amend KRS 342.0011(37) Guides to the evaluation of permanent impairment means the Fifth Edition Guide published by the AMA and for psychological impairments, Chapter 12 of the second edition published by the AMA. Section 2) create a new section of KRS Chapter 342 declaring the Commonwealth of Kentucky's policy is to utilize the most recent, valid scientific advancements in medicine when evaluating the nature and extent of an injured worker's impairment. Within 180 days of the publication of a new version of the "Guides", the Executive Director shall evaluation and recommend to the General Assembly whether all or a portion of the "Guides" shall be used to produce more accurate ratings of permanent impairment for work related injuries. Prior to making this recommendation, the Executive Director shall consult with medical providers, injured worker representatives, employers and employer representatives, insurance carriers, etc., and analyze studies conducted by workers' compensation rating organizations such as NCCI. The recommendation of the executive director cannot become effective unless the General Assembly approves and adopts such recommendation.

House Bill 395: An act relating to the Workers' Compensation Funding Commission. This would amend KRS 342.122 to extend the payoff date for the workers' compensation special fund from December 31, 2018 to December 31, 2029 (passed both chambers and awaits signature by the Governor).

House Bill 435: Liability for Safety Violations: This would amend KRS 342.165 to make employers of leased employees and subcontracted employees liable if their employees are injured due to safety violation of entity to which it has a contract.

Senate Bill 214: An Act relating to the Kentucky Employers' Mutual Insurance Authority. Create new sections of KRS 342.801 to 342.843 to require Kentucky Employers' Mutual Insurance to develop a special dividend distribution plan, subject to the approval of the executive director, and declare a special dividend; amend KRS 342.805 to define "executive director"; amend KRS 342.819 to require KEMI to declare an annual dividend.

Senate Bill 220: Income and medical benefits, attorney fees, modifications. An act relating to workers' compensation:

Amend various sections of KRS Chapter 342 regarding workers' compensation to limit income and medical benefits to age 70 or 5 years after injury, change time for reopenings, and increase attorney fees; modify the income benefits in KRS 342.730; allow retention for sitting board members; create study group for medical issues.

Workers' Compensation Board and Administrative Law Judge Appointments for the Department of Workers' Claims



By way of Executive Order 2009-1101, Governor Beshear appointed Michael W. Alvey of Owensboro, Kentucky, to the Workers' Compensation Board where he will serve as Board Chairman. Mr. Alvey has a Bachelor of Arts in History from Western Kentucky University and received his juris doctorate at the University of Kentucky in 1988. Mr. Alvey will serve a term expiring January 4, 2014.

Effective January 1, 2010, Governor Beshear appointed Robert L. Swisher and Jeanie Owen Miller to serve as Administrative Law Judges for the Department of Workers' Claims. Robert L. Swisher is a graduate of the University of Notre Dame and received his juris doctorate from the University of Kentucky College of Law in 1979. Jeanie Owen Miller has a Bachelor of Arts, Masters in Public Administration and received her juris doctorate from the University of Kentucky in 1984.

The administrative law judges and members of the Workers' Compensation Board serve at the pleasure of the Governor for four-year terms.

SAVE THE DATES

The Kentucky Labor Cabinet will be holding regional seminars around the state promoting our programs in Wage and Hour, Safety and Health, Workers Compensation and Registered Apprenticeship. Please look for an upcoming notice regarding these important information sharing opportunities.

June 8-9, July 23-24, July 14-15, July 28-29, August 11-12, August 25-26

Paducah, Owensboro, Louisville, Lexington, Covington, Ashland

(Dates have yet to be matched to the localities)